

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE: PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE ) MDL # 1456  
LITIGATION )  
  ) Master File No. 1:01-CV-12257-PBS  
  ) Sub-Category Case No. 1:08-CV-11200  
  )  
  ) Judge Patti B. Saris  
THIS DOCUMENT RELATES TO )  
*United States ex rel. Linnette Sun and Greg* )  
*Hamilton, Relators* )  
v. )  
*Baxter Healthcare Corporation* )  
  )  
  )

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**LOCAL RULE 56.1 STATEMENT OF MATERIAL FACTS SUPPORTING  
RELATORS' MEMORANDUM IN OPPOSITION OF BAXTER HEALTHCARE  
CORPORATION'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

Pursuant to Rule 56, Fed. R. Civ. P. and Local Rule 56.1 Relators submit this statement of material facts in opposition to Baxter's Motion for Partial Summary Judgment.

I. **THE UNITED STATES DID NOT RELEASE, AND NEVER INTENDED TO RELEASE CLAIMS FOR ADVATE, WHICH ARE NOWHERE IN VEN-A-CARE'S COMPLAINT.**

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1. The United States has filed a Statement indicating that it consented to Ven-A-Care's dismissal with prejudice "only of claims pled in relator Ven-A-Care's complaint."

[Document 7897, Case No. 1:01-cv-12257-PBS, Nov. 14, 2011.]

2. The Ven-A-Care complaint makes no mention whatsoever of Advate. [Document 1, Case No. 1:10-cv-11186,-PBS, May 28, 2010.]

3. This Court has determined that Relator Sun is the original source of information regarding Advate pricing fraud by Baxter. [Case No. 1:01-cv-12257-PBS, Doc. 7008 at 5 (Order of March 25, 2010).]

4. Baxter has admitted in its pleadings in this matter that Linnette Sun is the first-filed relator regarding allegations concerning Advate pricing fraud by Baxter. [Case No. 1:01-cv-12257-PBS, Doc. 7831-1 at 1 (July 29, 2011).]

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II. **THE STATE MEDICAID DIRECTORS HAD NO IDEA THAT BAXTER WAS IMPOSING A MEGA-SPREAD OF NEARLY TWO TIMES THE ACTUAL COST OF ADVATE AND RECOMBINATE.**

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3. The spread on Advate is, and has been approximately 192% of its acquisition cost. [Declaration of Greg Hamilton, ¶ 4.]

4. The spread on Recombinate is, and since 2001 has been approximately 186% of its acquisition cost. [Declaration of Greg Hamilton, ¶ 5.]

5. To the extent that cross-subsidization is an issue, it is expected that the cost of storing and administering Advate and Recombinate would require a margin of no more than 25% of the drug's actual cost. (*In Re Pharmaceutical Industry Average Wholeslae Price Litigation*; Trials of Class 2 and Class 3 Claims, 491 F.Supp. 2d 20, 37-38 (D. Mass. 2007).)

6. Relators refer to and incorporate the Declaration of Mark Kleiman Pursuant to Rule 56(f) of the Federal Rules of Civil Procedure.

Dated: November 14, 2011

/s/ Mark Allen Kleiman  
Mark Allen Kleiman  
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Counsel for Relators Linnette Sun and  
Greg Hamilton

**CERTIFICATION OF SERVICE**

I hereby certify that I caused a true and correct copy of the foregoing **LOCAL RULE**  
**56.1 STATEMENT OF MATERIAL FACTS SUPPORTING RELATORS'**  
**MEMORANDUM IN OPPOSITION OF BAXTER HEALTHCARE CORPORATION'S**  
**MOTION FOR PARTIAL SUMMARY JUDGMENT** to be served on all counsel of record  
via electronic service by sending a copy to LexisNexis File & Serve for posting and notification  
to all parties on November 14, 2011.

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/s/ Mark Allen Kleiman  
MARK ALLEN KLEIMAN